



**Billing code 3410-02 P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 948**

**[Doc. No. AMS-FV-13-0072; FV13-948-2 IR]**

**Irish Potatoes Grown in Colorado; Decreased Assessment Rate  
for Area No. 2**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Colorado Potato Administrative Committee, Area No. 2 (Committee), for the 2013-2014 and subsequent fiscal periods from \$0.0051 to \$0.0033 per hundredweight of potatoes handled. The Committee locally administers the marketing order, which regulates the handling of Irish potatoes grown in Colorado. Assessments upon potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective November 23, 2013. Comments received by January 21, 2014, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Sue.Coleman@ams.usda.gov](mailto:Sue.Coleman@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing

Order and Agreement Division, Fruit and Vegetable Program,  
AMS, USDA, 1400 Independence Avenue SW, STOP 0237,  
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:  
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under  
Marketing Agreement No. 97 and Order No. 948, both as  
amended (7 CFR part 948), regulating the handling of Irish  
potatoes grown in Colorado, hereinafter referred to as the  
"order." The order is effective under the Agricultural  
Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-  
674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this  
rule in conformance with Executive Orders 12866 and 13563.

This rule has been reviewed under Executive Order  
12988, Civil Justice Reform. Under the order now in effect,  
Colorado Area No. 2 potato handlers are subject to  
assessments. Funds to administer the order are derived from  
such assessments. It is intended that the assessment rate,  
as issued herein, will be applicable to all assessable  
potatoes beginning September 1, 2013, and continue until  
amended, suspended, or terminated.

The Act provides that administrative proceedings must  
be exhausted before parties may file suit in court. Under  
section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013-2014 and subsequent fiscal periods from \$0.0051 to \$0.0033 per hundredweight of potatoes. This change was unanimously recommended by the Committee at a meeting held on July 18, 2013.

Section 948.4 of the order divides the State of Colorado into three areas of regulation for marketing order purposes. These areas include: Area No. 1, commonly known as the Western Slope; Area No. 2, commonly known as San Luis Valley; and, Area No. 3, which consists of the remaining producing areas within the State of Colorado not included in the definition of Area No. 1 or Area No. 2. Currently, the

order only regulates the handling of potatoes produced in Area No. 2 and Area No. 3. Regulation for Area No. 1 has been suspended.

Section 948.50 of the order establishes committees as administrative agencies for each of the areas set forth under § 948.4. Section 948.75 establishes that each area committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Section 948.76 requires each area committee to prepare and submit an estimated budget to the Secretary for approval and to recommend a rate of assessment sufficient to provide funds to defray its proposed expenditures.

The members of the Committee are producers and handlers of Colorado Area No. 2 potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003-2004 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate for Colorado Area No. 2 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 18, 2013, and unanimously recommended 2013-2014 expenditures of \$55,745 and an assessment rate of \$0.0033 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$71,227 and the assessment rate was \$0.0051 per hundredweight of potatoes. The assessment rate of \$0.0033 is \$0.0018 lower than the rate currently in effect. The assessment rate decrease is necessary to reduce the funds held in reserve to less than approximately two fiscal periods' expenses (\$ 948.78).

The major expenditures recommended by the Committee for the 2013-2014 fiscal period include \$49,265 for administrative expenses, \$3,393 for office expenses, and \$3,087 for building maintenance expenses. Budgeted expenses for these items in 2012-2013 were \$59,122 for administrative expenses, \$4,275 for office expenses, and \$7,830 for building maintenance expenses, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area No. 2 potatoes. Colorado Area No. 2 potato shipments are estimated to be 14,363,000 hundredweight, which should provide \$47,397.90 in assessment income. Income derived from handler assessments and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently \$120,995) will be reduced to comply with the maximum permitted by the order of approximately two fiscal periods' expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available

information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013-2014 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural



producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

During the 2011-2012 fiscal period, the most recent for which statistics are available, 15,072,963 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$12.60 per hundredweight, the Committee estimates that 66 Area No. 2 handlers, or about 83 percent, had annual receipts of less than \$7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2011 Colorado fall potato crop was \$10.70 per hundredweight. Multiplying \$10.70 by the shipment quantity of 15,072,963 hundredweight yields an annual crop revenue estimate of \$161,280,704. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$896,000 (\$161,280,704 divided by 180), which is greater than the SBA threshold of \$750,000. Consequently, on average, many of the Colorado Area No. 2 potato producers may not be classified as small entities.

This rule decreases the assessment rate established for the Committee, and collected from handlers, for the 2013-2014 and subsequent fiscal periods from \$0.0051 to \$0.0033 per hundredweight of potatoes. The Committee unanimously recommended 2013-2014 expenditures of \$55,745 and an assessment rate of \$0.0033. The assessment rate of \$0.0033 is \$0.0018 lower than the 2012-2013 rate. The quantity of assessable potatoes for the 2013-2014 fiscal period is estimated at 14,360,000 hundredweight. Thus, the \$0.0033 rate should provide \$47,388 in assessment income. Income derived from handler assessments and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2013-2014 year include \$49,265 for administrative expenses, \$3,393 for office expenses, and \$3,087 for building maintenance expenses. Budgeted expenses for these items in 2012-2013 were \$59,122, \$4,275, and \$7,830, respectively.

The lower assessment rate is necessary to reduce the reserve balance to less than approximately two fiscal periods' expenses. The reserve balance on August 31, 2012, was \$120,995. This amount exceeds the maximum authorized reserve amount of \$111,490 by \$9,505. Assessment income for

2013-2014 is estimated at \$47,397.90, while expenses are estimated at \$55,745. The Committee anticipates using \$8,347.10 of their reserve fund for the 2013-2014 fiscal period. While the reserve fund may exceed the maximum authorized level by \$1,157.90, it was noted that there is a potential that the Committee may receive less assessments than estimated. In addition, the Committee expects to draw funds from the reserve in subsequent fiscal periods that would further reduce the balance.

The Committee discussed alternatives to this action. Leaving the assessment rate at the current \$0.0051 per hundredweight was initially considered, but not recommended because of the Committee's desire to decrease the level of the monetary reserve so that it is not more than approximately two fiscal periods' expenses. Lower assessment rates were considered, but also not recommended, because they would not generate the amount of income necessary to administer the program. The Committee ultimately determined that an assessment income of \$47,397.90, generated from the \$0.0033 rate, combined with reserve funds, would be sufficient to meet its 2013-2014 expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period

indicates that the producer price for the 2013-2014 season could range between \$8.00 and \$15.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2013-2014 fiscal period, as a percentage of total producer revenue, could range between 0.02 and 0.04 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry, and all interested persons were invited to attend and participate in the Committee's deliberations. Like all Committee meetings, the July 18, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements were previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178

(Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizens to access Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013-2014 fiscal period began on September 1, 2013, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable potatoes beginning with the 2013-2014 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948 - IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601-674.

**2. Section 948.216 is revised to read as follows:**

**§ 948.216 Assessment rate.**

On and after September 1, 2013, an assessment rate of \$0.0033 per hundredweight is established for Colorado Area No. 2 potatoes.

Dated: November 18, 2013.

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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